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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/121,849 07/24/98 GARFIELD

R SCH1237DI

EXAMINER

HM22/0121

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FILING INFORMATION	
ART UNIT	PAPER NUMBER

1651

DATE MAILED:

01/21/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on DEC 2, 1999

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-34 is/are pending in the application.

Of the above, claim(s) 1-13, 15-16, 20-27, 30, 32-37 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 14, 17-19, 28-29 is/are rejected.

☒ Claim(s) 31 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

Ser No 09/121849

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

1. Receipt is acknowledged of the response filed December 02, 1999.

2. Claims 1-34 are now present in the instant application.

3. Claims 14-21 and 28-31 are drawn to a pharmaceutical composition, classified in Class 514, subclass 310 and the species nitric oxide donor-nitroglycerin and the species cyclooxygenase inhibitor-aspirin.

Claim 34 is not included since it was not the elected species. In addition, the expression "is not aspirin" in the claim is not supported by the specification. If the claim was examined, if the claim was within the group elected, the claim would have been rejected under 35 U.S.C. 112 as being not supported by the written specification or drawn to new matter for the expression.

Claims 1-13, 22-27 and 32-33, (Invention I), drawn to a method of treating preeclampsia, classified in Class 514, subclass 310 have been withdrawn from consideration.

Claims 15-16, 20, 21 and 30 drawn to the non-elected species have also been withdrawn.

4. The rejection of the claims over Fankhauser et al U.S. 4,855,142 has been withdrawn in view of the persuasive arguments.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14, 17-19 and 28-29 stand rejected under 35 U.S.C. 102(a/b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Harrison et al U.S. 5,508,045.

The reference teaches a **pharmaceutical composition** that is considered to be within the scope of the broad claimed composition.

If there are any differences with respect to the ranges, ingredients etc., these differences would have been prima facie obvious to one of ordinary skill having the reference(s) in front of him absent unexpected or unobvious data.

There is nothing on the record that teaches the claimed composition to be not anticipatory nor obvious over the reference disclosure for the combination of at least the two required

components in the admixture.

6. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

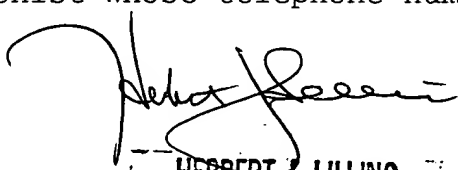
7. No claim is allowed.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is (703) 308-2034. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034
Art Unit 1651
January 17, 2000


HERBERT J. LILLING
PATENT EXAMINER
GROUP 1600 ART UNIT 1651